

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-03-DL-229
)	
Paulino Bernal Evangelism, Inc.)	NAL/Acct. No.200332500008
Licensee of KBRN(AM) in Boerne, Texas)	FRN 0005733662
McAllen, Texas)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 19, 2003

By the Enforcement Bureau, Dallas Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find Paulino Bernal Evangelism, Inc. (“PAULINO”), licensee of radio station KBRN, Boerne, Texas, apparently liable for a forfeiture in the amount of twenty-five thousand dollars (\$25,000) for willful violation of Sections 73.1125, 11.35(a), and 73.3527(c)(1) of the Commission's Rules (“Rules”). Specifically, we find PAULINO apparently liable for failure to maintain a main studio in the community of license, failure to install and maintain operational Emergency Alert System (“EAS”) equipment during the times the station was in operation, and failure to make available a public inspection file.

II. BACKGROUND

2. On October 28, 2003 an agent from the FCC Enforcement Bureau’s Dallas Field Office (“Dallas Office”) attempted an inspection of AM broadcast station KBRN in Boerne, Texas. The FCC agent could not locate a KBRN studio in Boerne, Texas, the community of license. The station had no local or toll-free telephone number to contact the station. Further investigation revealed the only presence in Boerne, Texas consisted of an AM radio transmission tower and a shed containing transmitting equipment. The transmitter shed was located on private property behind two locked fences and inaccessible to the public. Additionally, PAULINO did not have any paid employee presence in Boerne, Texas.

3. On October 28, 2003, Mr. Gilbert Martinez, technical representative for PAULINO advised the Dallas FCC agent that the transmitter shed also served as KBRN’s main studio. Additionally, Mr. Martinez stated the only station personnel in Boerne, Texas was Mr. Egar Gutierrez, an unpaid volunteer from a local church. Mr. Martinez further stated that Mr. Gutierrez would make the public inspection file available for review or inspection for anyone who wished to review or inspect it.

4. On October 28, 2003, the Dallas FCC agent phoned Mr. Egar Gutierrez, an unpaid volunteer representing PAULINO, identified himself as an agent of the FCC’s Dallas Office and stated he wanted to inspect KBRN’s public inspection file. Mr. Gutierrez provided access to KBRN’s transmitter shed and

produced transmitter information and technical manuals as the station's public inspection file. Mr Gutierrez indicated no other documentation for station KBRN was available.

5. On October 28, 2003, the Dallas FCC agent inspected the equipment installed at the transmitter site for KBRN. The station had no EAS equipment installed and no EAS logs.

III. DISCUSSION

6. Section 73.1125 requires the licensee of a broadcast station to maintain a main studio at one of the following locations: (1) within the station's community of license; (2) at any location within the principal community contour of any AM, FM or TV broadcast station licensed to the station's community of license; or (3) within twenty five miles from the reference coordinates of the center of its community of license. In adopting the main studio rules, the Commission stated that the station's main studio must have the capability to serve the needs and interests of the residents of the station's community of license.¹ To fulfill this function, a station, among other things, must maintain a meaningful presence at its main studio.² The Commission has defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel.³ The licensee need not have the same staff person and manager at the studio, as long as there is management and staff presence there during normal business hours.⁴ Although management personnel need not be "chained to their desks" during normal business hours, they must "report at the main studio on a daily basis, spend a substantial amount of time there and ... use the studio as a home base."⁵ On October 28, 2003, PAULINO failed to maintain a main studio in the community of license for AM broadcast station KBRN or at any of the permissible locations discussed above (community of license). Additionally there was no managerial or staff presence in the community of license.

7. Section 11.35(a) of the Rules requires broadcast stations, cable systems, and wireless cable systems to be responsible for ensuring that EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring and transmitting functions are available during the times that the stations and systems are in operation. On October 28, 2003, PAULINO operated AM broadcast station KBRN without installed and operational EAS equipment. Additionally, no documentation was evident to indicate EAS equipment had ever been operational at station KBRN or that the equipment had been removed from service for repair⁶

8. Section 73.3527(a)(2) of the Rules⁷ requires that every permittee or licensee of an AM, FM, or

¹ *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3217-18 (1987), *clarified*, 3 FCC Rcd 5024, 5026 (1988).

² *Id.*

³ *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991), *clarified*, 7 FCC Rcd 6800 (1992).

⁴ *Id.*, 6 FCC Rcd at 3616 n.2; 7 FCC Rcd at 6800 n.4.

⁵ *Id.*, 7 FCC Rcd at 6802.

⁶ EAS tests and activations, failure to receive such test and activations, and EAS equipment malfunctions must be recorded in the station log. See 47 C.F.R. §§ 11.35(a)-(b), 11.55(c)(7) and 11.61(b).

⁷ 47 C.F.R. § 73.3527(a)(2).

TV station in the non commercial educational broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(11) and paragraph (e)(12) of this section. Section 73.3527(b) of the Rules⁸ requires the public inspection file be maintained at the station's main studio. Section 73.3527(c)(1) of the Rules requires the file be available for public inspection at any time during regular business hours. On October 28, 2003, no public inspection file material was available for inspection in the community of license during regular business hours for AM broadcast station KBRN.

9. Based on the evidence before us, we find PAULINO willfully⁹ violated Sections 73.1125, 11.35(a), and 73.3527(c)(1) of the Rules, by failing to maintain a main studio in the community of license, failing to maintain installed and operational EAS sending and receiving equipment, and failing to make available a public inspection file.

10. Pursuant to Section 1.80(b)(4) of the Rules,¹⁰ the base forfeiture amount for public inspection file violations is \$10,000, for failing to have installed and operational EAS sending and receiving equipment is \$8,000, and violation of main studio rule is \$7,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹¹ Considering the entire record and applying the factors listed above, this case warrants a \$25,000 forfeiture.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,¹² and Sections 0.111, 0.311 and 1.80 of the Rules,¹³ Paulino Bernal Evangelism, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty-five thousand dollars (\$25,000) for willful violation of Sections 73.1125, 11.35(a), and 73.3527(c)(1) of the Rules for failing to maintain a main studio in the community of license, have EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment installed and operational, and failing to make available a public inspection file.

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, Paulino Bernal Evangelism, Inc. SHALL PAY the full amount of the

⁸ 47 C.F.R. § 73.3527(b).

⁹ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

¹⁰ 47 C.F.R. § 1.80(b)(4).

¹¹ 47 U.S.C. § 503(b)(2)(D).

¹² 47 U.S.C. § 503(b).

¹³ 47 C.F.R. §§ 0.111, 0.311, 1.80.

proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁴

14. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Spectrum Enforcement Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

17. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to Paulino Bernal Evangelism, Inc., P.O. Box 252, McAllen, TX. 78505.

FEDERAL COMMUNICATIONS COMMISSION

¹⁴ See 47 C.F.R. § 1.1914.

James D. Wells
Dallas Office, Enforcement Bureau

Attachment